



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

January 3, 2001

MEMORANDUM FOR DOUG ROGERS  
DIRECTOR, OFFICE OF INTEREST &  
PENALTY ADMINISTRATION  
S:C:CP:RC:P  
ATTN: ONEIDA STEPHENS

FROM: Pamela W. Fuller *PWF*  
Acting Chief, Branch 1  
Office of the Assistant Chief Counsel  
(Administrative Provisions & Judicial Practice)  
CC:PA:APJP:1

SUBJECT: GATT Credit Interest Computations

This is in response to your memorandum of July 11, 2000, in which you inquired about the manner in which credit interest is calculated on a Form 941, Employment Tax Return.

**ISSUE:** Whether interest due on a refund of the employee portion of a FICA tax overpayment submitted by the corporate employer should be calculated under Internal Revenue Code § 6621 using the rate for individuals or the GATT rate for corporations?

**CONCLUSION:** To the extent the corporate employer is acting as a conduit for the employee when filing a claim for refund of FICA taxes on behalf of its employee(s), the interest on the employee portion of the FICA tax refund should be calculated using the rate for individuals.

**DISCUSSION:** In certain circumstances, an employer may obtain a refund for overpayment of the employee portion of the social security (FICA) tax withheld by the employer. See I.R.C. § 6413(b); Treas. Reg. § 31.6402(a)-2. Under such circumstances, before making a claim for such a refund, the employer must either have repaid the tax to the employee or have obtained the employee's written consent to the allowance of the refund. Treas. Reg. § 31.6402(a)-2(a)(2).

The liability for the employee portion of the FICA tax is on the employee. I.R.C. § 3101. By deducting the FICA tax from wages paid, the employer "collects" the employee's I.R.C. § 3101 tax liability. I.R.C. § 3102. Where the employer, utilizing the procedures

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set forth in Treas. Reg. § 31.6402(a)-2(a)(2), obtains a refund for the overpayment of the employee portion of the FICA tax, it does so on behalf of the employee. Amounts received by the employer as a refund for overpayment of the employee portion of the FICA tax must be paid over to the employee. Cf. Treas. Reg. § 31.6413(a)-1(b). Inasmuch as the refund is sought on behalf of, and paid over to, the individual employee, interest on the refund should be calculated under Internal Revenue Code § 6621 using the rate for individuals.

Please feel free to contact me at 622-4910 if you have any questions.

cc: Chief, Employment Tax Branch 1, Division Counsel TE/GE